

AMENDED IN SENATE JUNE 5, 2007  
AMENDED IN SENATE APRIL 11, 2007  
AMENDED IN SENATE MARCH 26, 2007

**SENATE BILL**

**No. 554**

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**Introduced by Senator Migden**

February 22, 2007

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~~An act to amend Section 22971 of the Business and Professions Code, and to amend Sections 30121 and 30131.1 of, and to repeal and add Section 30003 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy. An act relating to taxation.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 554, as amended, Migden. Cigarette Tax Law: cigarettes.

The Cigarette and Tobacco Products Tax Law, under the Cigarette Tax Law, imposes a tax on every distributor of cigarettes and tobacco products at specified rates.

The Tobacco Tax and Health Protection Act of 1988 (Proposition 99), which was adopted by the voters at the general election held on November 8, 1988, imposes a surtax on the distribution of cigarettes, in addition to the taxes imposed pursuant to the Cigarette and Tobacco Products Tax Law, as of the effective date of the adoption of Proposition 99. The California Families and Children Act of 1998 (Proposition 10), which was adopted by the voters at the general election held on November 3, 1998, imposes a surtax on the distribution of cigarettes, in addition to the taxes imposed pursuant to the Cigarette and Tobacco Products Tax Law and the Tobacco Tax and Health Protection Act of 1988, as of the effective date of the adoption of Proposition 10.

A cigarette, for purposes of all of the tax imposed under the Cigarette Tax Law, is defined as any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and irrespective of whether the tobacco is flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material, except where such wrapper is wholly or in the greater part made of tobacco and such roll weighs over 3 pounds per 1,000.

~~This bill would change the definition of a cigarette under the Cigarette Tax Law to mean any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and meets one of several specified conditions, as provided. This bill would also make conforming changes with respect to the definition of a cigarette in other provisions of law.~~

~~The Tobacco Tax and Health Protection Act of 1988, and the California Families and Children Act of 1998, each require that amendments to their provisions be consistent with the act's purposes, and be approved, respectively, by either a  $\frac{4}{5}$  or  $\frac{2}{3}$  vote of both houses of the Legislature.~~

~~This bill would declare that it amends those measures in a manner that furthers and is consistent with the purposes of those measures, and that it would require a  $\frac{4}{5}$  vote for passage.~~

~~This bill would take effect immediately as a tax levy.~~

~~This bill would declare the intent of the Legislature to enact legislation that would create a uniform definition of a "cigarette" for purposes of the Cigarette Tax Law and other provisions of law.~~

~~Vote:  $\frac{4}{5}$ -majority. Appropriation: no. Fiscal committee: yes no. State-mandated local program: no.~~

*The people of the State of California do enact as follows:*

- 1     SECTION 1. *It is the intent of the Legislature to enact*
- 2     *legislation that would create a uniform definition of a "cigarette"*
- 3     *for purposes of the Cigarette Tax Law and other provisions of law.*
- 4     SECTION 1. ~~Section 22971 of the Business and Professions~~
- 5     ~~Code, as amended by Section 3 of Chapter 501 of the Statutes of~~
- 6     ~~2006, is amended to read:~~
- 7     22971. ~~For purposes of this division, the following terms shall~~
- 8     ~~have the following meanings:~~
- 9     (a) ~~"Board" means the State Board of Equalization.~~

1 (b) “Importer” means an importer as defined in Section 30019  
2 of the Revenue and Taxation Code.

3 (c) “Distributor” means a distributor as defined in Section 30011  
4 of the Revenue and Taxation Code.

5 (d) “Manufacturer” means a manufacturer of cigarettes or  
6 tobacco products sold in this state.

7 (e) “Retailer” means a person who engages in this state in the  
8 sale of cigarettes or tobacco products directly to the public from  
9 a retail location. Retailer includes a person who operates vending  
10 machines from which cigarettes or tobacco products are sold in  
11 this state.

12 (f) “Retail location” means both of the following:

13 (1) Any building from which cigarettes or tobacco products are  
14 sold at retail.

15 (2) A vending machine.

16 (g) “Wholesaler” means a wholesaler as defined in Section  
17 30016 of the Revenue and Taxation Code.

18 (h) “Cigarette” means a cigarette as defined in Section 30003  
19 of the Revenue and Taxation Code, as that section read on January  
20 1, 2008.

21 (i) “License” means a license issued by the board pursuant to  
22 this division.

23 (j) “Licensee” means any person holding a license issued by  
24 the board pursuant to this division.

25 (k) “Sale” or “sold” means a sale as defined in Section 30006  
26 of the Revenue and Taxation Code.

27 (l) “Tobacco products” means tobacco products as defined in  
28 subdivision (b) of Section 30121 and subdivision (b) of Section  
29 30131.1 of the Revenue and Taxation Code.

30 (m) “Unstamped package of cigarettes” means a package of  
31 cigarettes that does not bear a tax stamp as required under Part 13  
32 (commencing with Section 30001) of Division 2 of the Revenue  
33 and Taxation Code, including a package of cigarettes that bears a  
34 tax stamp of another state or taxing jurisdiction, a package of  
35 cigarettes that bears a counterfeit tax stamp, or a stamped or  
36 unstamped package of cigarettes that is marked “Not for sale in  
37 the United States.”

38 (n) “Person” means a person as defined in Section 30010 of the  
39 Revenue and Taxation Code.

1     ~~(o) “Package of cigarettes” means a package as defined in~~  
2     ~~Section 30015 of the Revenue and Taxation Code.~~

3     ~~(p) (1) “Control” or “controlling” means possession, direct or~~  
4     ~~indirect, of the power:~~

5     ~~(A) To vote 25 percent or more of any class of the voting~~  
6     ~~securities issued by a person.~~

7     ~~(B) To direct or cause the direction of the management and~~  
8     ~~policies of a person, whether through the ownership of voting~~  
9     ~~securities, by contract (other than a commercial contract for goods~~  
10    ~~or nonmanagement services), or otherwise provided; however, no~~  
11    ~~individual shall be deemed to control a person solely on account~~  
12    ~~of being a director, officer, or employee of such person.~~

13    ~~(2) For purposes of subparagraph (B) of this subdivision, a~~  
14    ~~person who, directly or indirectly, owns, controls, holds, with the~~  
15    ~~power to vote, or holds proxies representing 10 percent or more~~  
16    ~~of the then outstanding voting securities issued by another person,~~  
17    ~~is presumed to control such other person.~~

18    ~~(3) For purposes of this division, the board may determine~~  
19    ~~whether a person in fact controls another person.~~

20    ~~(q) “Law enforcement agency” means a sheriff, a police~~  
21    ~~department, or a city, county, or city and county agency or~~  
22    ~~department designated by the governing body of that agency to~~  
23    ~~enforce this chapter or to enforce local smoking and tobacco~~  
24    ~~ordinances and regulations.~~

25    ~~(r) “Brand family” has the same meaning as that term is defined~~  
26    ~~in paragraph (2) of subdivision (a) of Section 30165.1 of the~~  
27    ~~Revenue and Taxation Code.~~

28    ~~(s) The amendments made to this section by the act adding this~~  
29    ~~subdivision shall become operative May 1, 2007.~~

30    ~~SEC. 2. Section 30003 of the Revenue and Taxation Code is~~  
31    ~~repealed.~~

32    ~~SEC. 3. Section 30003 is added to the Revenue and Taxation~~  
33    ~~Code, to read:~~

34    ~~30003. “Cigarette” means any product that contains nicotine,~~  
35    ~~is intended to be burned or heated under ordinary conditions of~~  
36    ~~use, and consists of or contains (a) any roll of tobacco wrapped in~~  
37    ~~paper or in any substance not containing tobacco; (b) tobacco, in~~  
38    ~~any form, that is functional in the product, which because of its~~  
39    ~~appearance, the type of tobacco used in the filler, or its packaging~~  
40    ~~and labeling, is likely to be offered to, or purchased by, consumers~~

1 as a cigarette; or (c) any roll of tobacco wrapped in any substance  
2 containing tobacco which, because of its appearance, the type of  
3 tobacco used in the filler, or its packaging and labeling, is likely  
4 to be offered to, or purchased by, consumers as a cigarette  
5 described in this section.

6 SEC. 4. ~~Section 30121 of the Revenue and Taxation Code is~~  
7 ~~amended to read:~~

8 30121. For purposes of this article:

9 (a) ~~“Cigarettes” has the same meaning as in Section 30003, as~~  
10 ~~that section read on January 1, 2008.~~

11 (b) ~~“Tobacco products” includes, but is not limited to, all forms~~  
12 ~~of cigars, smoking tobacco, chewing tobacco, snuff, and any other~~  
13 ~~articles or products made of, or containing at least 50 percent,~~  
14 ~~tobacco, but does not include cigarettes.~~

15 (c) ~~“Fund” means the Cigarette and Tobacco Products Surtax~~  
16 ~~Fund created by Section 30122.~~

17 SEC. 5. ~~Section 30131.1 of the Revenue and Taxation Code~~  
18 ~~is amended to read:~~

19 30131.1. ~~The following definitions apply for purposes of this~~  
20 ~~article:~~

21 (a) ~~“Cigarette” has the same meaning as in Section 30003, as~~  
22 ~~that section read on January 1, 2008.~~

23 (b) ~~“Tobacco products” includes, but is not limited to, all forms~~  
24 ~~of cigars, smoking tobacco, chewing tobacco, snuff, and any other~~  
25 ~~articles or products made of, or containing at least 50 percent,~~  
26 ~~tobacco, but does not include cigarettes.~~

27 SEC. 6. ~~The Legislature finds and declares that this act furthers~~  
28 ~~and is consistent with the purposes expressed in Article 2~~  
29 ~~(commencing with Section 30121) of Chapter 2 of Part 13 of~~  
30 ~~Division 2 of the Revenue and Taxation Code, as contained within~~  
31 ~~the Tobacco Tax and Health Protection Act of 1988 (Proposition~~  
32 ~~99 of the November 8, 1988, general election), and Article 3~~  
33 ~~(commencing with Section 30131) of Chapter 2 of Part 13 of~~  
34 ~~Division 2 of the Revenue and Taxation Code, as contained in the~~  
35 ~~California Families and Children Act of 1998 (Proposition 10 of~~  
36 ~~the November 3, 1998, general election).~~

37 SEC. 7. ~~This act provides for a tax levy within the meaning of~~  
38 ~~Article IV of the Constitution and shall go into immediate effect.~~